

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE HONORABLE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of

Gary W. James et al.

Confirmation No. 2979

Application No.: 10/812,148

Examiner: Matthew W. Ing

Filed: March 29, 2004

Docket No.: METZ 200011US01

Title: CABINET SHELF SECURING MEMBERS

BRIEF ON APPEAL

Appeal from Group 3637

James E. Scarbrough, Reg. No. 47,056  
FAY SHARPE LLP  
The Halle Building – 5th Floor  
1228 Euclid Avenue  
Cleveland, OH 44115  
Phone: 216-363-9000  
E-mail: [jscarbrough@faysharpe.com](mailto:jscarbrough@faysharpe.com)  
Attorney for Appellants

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence (and any item referred to herein as being attached or enclosed) is (are) being transmitted to the USPTO by electronic transmission via the EFS Web on the date indicated below.

February 7, 2011

Date

*Kara L. Krist*

Name: Kara L. Krist

TABLE OF CONTENTS

	<u>Page</u>
I. REAL PARTY IN INTEREST .....	1
II. RELATED APPEALS AND INTERFERENCES .....	2
III. STATUS OF CLAIMS .....	3
IV. STATUS OF AMENDMENTS .....	4
V. SUMMARY OF CLAIMED SUBJECT MATTER.....	5
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL .....	8
VII. ARGUMENT .....	9
A.    Claims 1, 5, 6 and 9 Would Not Have Been Obvious Over Winquist in view of Vargo, Young, Evans, and Znamirowski .....	9
1.    Claim 1 .....	9
VIII. CLAIMS APPENDIX: .....	13
IX. EVIDENCE APPENDIX .....	16
X. RELATED PROCEEDINGS APPENDIX.....	17

**I. REAL PARTY IN INTEREST**

The real party in interest for this appeal and the present application is Metal Fabricating Corporation, by way of an Assignment recorded in the U.S. Patent and Trademark Office at Reel 015161, Frame 0332.

II. RELATED APPEALS AND INTERFERENCES

There are no prior or pending appeals, interferences or judicial proceedings, known to Appellants, Appellants' representative, or the Assignee, that may be related to, or which will directly affect or be directly affected by or have a bearing upon the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1, 5, 6 and 9 are on appeal.

Claims 1, 5, 6 and 9 are pending.

Claims 1, 5, 6 and 9 are rejected.

Claims 2-4, 7-8 and 10-21 are cancelled.

**IV. STATUS OF AMENDMENTS**

No Amendment After Final Rejection has been filed.

## V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention of claim 1 is a metal cabinet having a first side wall (90) (FIG. 6) having flanges (92, 94, 96, 98) (FIG. 6) extending from opposite edges thereof. At least one of the flanges has a pair of circular openings (100) formed therein (FIG. 6). The openings are positioned near opposite ends of the at least one of the flanges. The first side wall has a central wall from which the flanges extend (paragraph [0023] of specification).

Claim 1 also recites a first support member (110) (FIG. 6) punched out of and extending from the central wall adjacent an end of the central wall opposite an end of the central wall adjacent the at least one of the flanges which has the circular openings. A first opening is formed through the central wall adjacent the first support member. The first support member includes a straight first leg (112) (FIGS. 11-13) extending perpendicular to the central wall and a straight second leg (114) (FIGS. 11-13) extending perpendicular from the first leg spaced from and substantially parallel to the central wall. The second leg includes first and second linear portions (212, 214) (FIG. 10) and a rounded portion (210) (FIG. 10) extending between the first and second linear portions and a hemispherical dimple (206) (FIG. 10) with rounded edges punched in a straight portion of the second leg. The dimple extends toward the first opening (paragraphs [0023], [0030] and [0031] of specification).

Claim 1 also recites a second side wall (64) (FIG. 5) positioned opposite the first side wall. The second side wall has flanges extending from a central wall thereof. At least one of the flanges has a pair of circular openings formed therein. A third rear wall interconnects the first and second side walls. A base wall (72) (FIG. 5) interconnects the first, second and third walls. A door (60) (FIG. 5) is hingedly connected to one of the first and second side walls and the base wall (paragraph [0022] of specification).

Claim 1 also recites a second support member (110) (FIG. 6) punched out of and extending from the central wall of the second side wall such that a second opening is formed through the central wall of the second side wall adjacent the second support member. The second support member of the second wall is positioned at substantially the same height from the base wall as the first support member on the first wall. The second support member includes a straight first leg (112) (FIGS. 11-13) extending

perpendicular to the third wall and a straight second leg (114) (FIGS. 11-13) extending perpendicular from the first leg spaced from and at least substantially parallel to the third wall. The second leg of the second support member includes first and second linear portions (212, 214) (FIG. 10) extending perpendicular to the first leg and a rounded portion (210) (FIG. 10) extending between the first and second portion and a hemispherical dimple (116) (FIGS. 11-13) with rounded edges formed in a straight portion of the second leg. The dimple extends toward the second opening (paragraphs [0023], [0024] and [0031] of specification).

Claim 1 also recites a third support member (110) (FIG. 6) punched out of and extending from the third rear wall such that a third opening is formed through the third wall adjacent the third support member. The third support member includes a straight first leg (114) (FIGS. 11-13) extending perpendicular to the third wall and a straight second leg extending perpendicular from the first leg spaced from and substantially parallel to the third wall. The second straight leg of the third support member includes first and second linear portions (212, 214) (FIG. 10) and a rounded portion (210) (FIG. 10) extending between the first and second portion and a hemispherical dimple (206) (FIG. 10) having rounded edges extending towards an inner surface of the third side wall (paragraphs [0023], [0024] and [0031] of specification).

Claim 1 also recites a removable shelf (74) (FIG. 5) including a planar surface (120) (FIG. 6) and a first flange (122) (FIG. 6) depending from one end of the planar surface and a second flange (124) (FIG. 6) depending from an opposite end of the planar surface. A third flange (126) (FIG. 6) depends from a third end of the planar surface and a fourth flange (128) (FIG. 6) depends from a fourth end of the planar surface opposite the third flange. At least one of the flanges of the shelf has a pair of circular openings (130) (FIG. 6) formed completely within a wall of the flange wherein one of the dimples (116) (FIG. 6) of one of the first, second and third support members (110) (FIG. 6) extends into one of the pair of circular openings of the shelf (paragraph [0025] of specification).

A support wall (78) (FIG. 5) is disposed between the first side wall and the second side wall wherein the support wall is parallel to the first side wall and the second side wall and is perpendicular to the base wall. The support wall is centrally positioned

within the cabinet between the base wall and an underside of the removable shelf. The support wall supports the shelf (paragraph [0022] of specification).

**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The following grounds of rejection are presented for review:

Claims 1, 5, 6 and 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Winquist (U.S. Patent No. 1,164,439) in view of Vargo (U.S. Patent No. 4,553,725), Young (U.S. Patent No. 3,677,202), Evans (U.S. Patent No. 3,168,365) and Znamirowski (U.S. Patent No. 4,288,132).

## VII. ARGUMENT

### A. Claims 1, 5, 6 and 9 Would Not Have Been Obvious Over Winquist in view of Vargo, Young, Evans, and Znamirowski

#### 1. Claim 1

Independent claim 1 recites a first side wall (90) has flanges (96) extending from opposite edges thereof and at least one flange has a pair of circular openings (100) positioned near opposite ends of the flange. The side wall has a central wall from which the flanges (96) extend. A first support member (110) is punched out of the central wall at an end of the central wall opposite the end of the central wall adjacent the flange having circular openings. A second side wall has flanges extending from a central wall and at least one of the flanges has a pair of circular openings formed therein. A second support member is punched out of the central wall of the second side wall. A support wall (78) is parallel to the first and second side walls and is perpendicular to the base wall (72).

The present invention relates generally to support members used to secure a removable shelf to internal walls of a metal cabinet. More particularly, the invention relates to an improved support member or lance having a dimple to allow a metal shelf to mount more securely to a side wall in a metal cabinet.

Removable shelves are mounted to internal side walls of the cabinet. Typically, lances are punched in the side walls of the cabinet to provide a retaining member in which a portion of a removable shelf can be placed to mount the shelf. Typically, the shelf can be easily removed from the lance by lifting up vertically on the shelf. Furthermore, nothing prevents the shelf from moving out of engagement with the lance. Thus, it would be desirable to provide a device that would promote a friction fit between the lance and the shelf so that removal of the shelf is still possible; however, the shelf has a tighter fit to the side wall and is more securely held in place.

Referring to FIG. 6 of the present application, a metal sheet 90 is shown which can be used as a side wall of a metal cabinet. The sheet 90 contains flanges 92, 94, 96, and 98 that extend in a substantially perpendicular fashion to the sheet. The flanges each have a plurality of openings 100. Furthermore, sheet 90 has lances 110

formed across the surface of the sheet. The lances are spaced apart and are parallel to each other. With reference now to FIGS. 11-13 along with FIG. 6, each lance includes a first leg 112 that extends from and is substantially perpendicular to the first leg and parallel to the sheet. (paragraph [0023] of present application.)

The lance also includes a protrusion or dimple 116 formed on the second leg 114. Dimple 116 is depressed or punched in the second leg 114 and preferably has a substantially hemi-spherical shape or configuration. The dimple can also be a solid piece that is affixed to the leg 114, or the lance could be a unitary structure formed with a solid dimple. Also, leg 116 is shown having an arcuate top edge; however, the leg can take any shape, including having a straight top edge or the like. (paragraph [0024] of present application.)

To mount the shelf 120 to the side wall 90, flange 122 is positioned adjacent or abutted against sidewall 90 and flanges 122 and 128 are placed adjacent inside walls of flanges 98 and 94, respectively. Openings 130 are aligned with the lances 110. Flange 122 is slid into lance 110 permitting dimple 116 to slide along or ride over a portion of flange 122 and be received by opening 130. Dimple 116 provides a slight friction fit between flange 122 and lance 110. Thus, when the shelf is installed to the side wall, the shelf is prevented from being easily removed from the side wall. The shelf is not permanently affixed to the side wall; however, the dimple provides enough frictional resistance to require a small amount of force to release or pull the shelf from the side wall, thus securing the shelf in position. (paragraph [0026] of present application.)

None of the now five documents cited against the claims disclose or support such an arrangement. This is a clear error of the Office Action. Additionally, the Office Action applies impermissible hindsight reasoning in a manner that overlooks important aspects of the claimed structure.

Specifically, none of the art of record, alone or in combination, teaches or suggests a side wall having a flange (96) with a pair of circular openings (100) formed therein and a central wall having a support member (110) punched out of the central wall at an end opposite an end of the central wall adjacent the flange having circular openings.

In particular, Winquist teaches a plurality of keys 7, 8 and notches 58 (FIGS. 6 and 7 of Winquist) for receiving the keys, but does not teach circular openings on opposite ends of a flange of a central wall, and a support member formed in a central wall on an opposite side of the central wall from the flange having circular openings.

Vargo teaches a clip with protuberances 94 and circular openings 64 (FIG. 1 of Vargo), but not a flange with a pair of circular openings on one side of a side wall central wall and a support member formed in the central wall on an opposite side of the side wall from the flange with the openings.

Young teaches a tongue 25 extending from flange 23 (FIG. 4 of Young), but not circular openings formed on a flange opposite a support member formed in a central wall.

Evans teaches hooks 17 formed on strips 18 (FIG. 4 of Evans), not a support member formed in a central wall or a flange with circular openings therein.

Znamirovski merely teaches a door 16, 17 having a hinge mount to a cabinet (FIG. 7 of Znamirovski).

It simply would not have been obvious to combine these references to result in the structure recited in claim 1. Moreover, the Examiner is using impermissible hindsight to combine five references to reject claim 1.

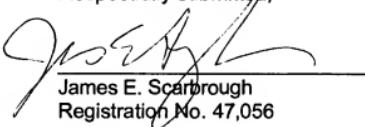
Thus, applicants respectfully submit that none of the art of record, alone or in combination, teaches the recitations of amended claim 1. Accordingly, claim 1 is in condition for allowance over the cited art of record. Claims 5, 6 and 9 dependent thereon stand together with claim 1 and are also in condition for allowance over the art of record for the reasons given for claim 1.

CONCLUSION

For all of the reasons discussed above, it is respectfully submitted that the rejections are in error and that claims 1, 5, 6 and 9 are in condition for allowance. For all of the above reasons, Appellants respectfully request this Honorable Board to reverse the rejections of claims 1, 5, 6 and 9.

Date: February 7, 2011

Respectfully submitted,



James E. Scarbrough  
Registration No. 47,056

JES:klk

FAY SHARPE LLP  
The Halle Building – 5th Floor  
1228 Euclid Avenue  
Cleveland, OH 44115  
Phone: 216-363-9000  
E-mail: [jscarbrough@faysharpe.com](mailto:jscarbrough@faysharpe.com)

APPENDICES

VIII. CLAIMS APPENDIX:

Claims involved in the Appeal are as follows:

1. (Previously Presented) A metal cabinet comprising:

a first side wall having flanges extending from opposite edges thereof; wherein at least one of said flanges comprises a pair of circular openings formed therein; wherein said openings are positioned near opposite ends of said at least one of said flanges;

wherein said first side wall comprises a central wall from which said flanges extend,

a first support member punched out of and extending from said central wall adjacent an end of said central wall opposite an end of said central wall adjacent said at least one of said flanges which comprises said circular openings, such that a first opening is formed through said central wall adjacent the first support member, wherein the first support member includes a straight first leg extending perpendicular to the central wall and a straight second leg extending perpendicular from the first leg spaced from and substantially parallel to the central wall, the second leg includes first and second linear portions and a rounded portion extending between said first and second linear portions and a hemispherical dimple with rounded edges punched in a straight portion of the second leg, wherein said dimple extends toward said first opening;

a second side wall positioned opposite the first side wall; said second side wall has flanges extending from a central wall thereof; wherein at least one of said flanges comprises a pair of circular openings formed therein;

a third rear wall interconnecting the first and second side walls;

a base wall interconnecting the first, second and third walls;

a door hingedly connected to one of said first and second side walls and said base wall;

a second support member punched out of and extending from said central wall of said second side wall such that a second opening is formed through said central wall of said second side wall adjacent the second support member, the second support member of said second wall is positioned at substantially the same height from the base wall as the first support member on the first wall, the second support member includes a

straight first leg extending perpendicular to the third wall and a straight second leg extending perpendicular from the first leg spaced from and at least substantially parallel to the third wall, the second leg of the second support member includes first and second linear portions extending perpendicular to said first leg and a rounded portion extending between said first and second portion and a hemispherical dimple with rounded edges formed in a straight portion of the second leg, wherein said dimple extends toward said second opening;

a third support member punched out of and extending from the third rear wall such that a third opening is formed through the third wall adjacent the third support member, the third support member includes a straight first leg extending perpendicular to the third wall and a straight second leg extending perpendicular from the first leg spaced from and substantially parallel to the third wall, the second straight leg of the third support member includes first and second linear portions and a rounded portion extending between the first and second portion and a hemispherical dimple having rounded edges extending towards an inner surface of the third side wall;

a removable shelf including a planar surface and a first flange depending from one end of the planar surface and a second flange depending from an opposite end of the planar surface; a third flange depending from a third end of the planar surface and a fourth flange depending from a fourth end of the planar surface opposite the third flange; wherein at least one of said flanges of said shelf comprises a pair of circular openings formed completely within a wall of said flange wherein one of said dimples of one of said first, second and third support members extends into one of said pair of circular openings of said shelf; and

a support wall disposed between the first side wall and the second side wall wherein said support wall is parallel to said first side wall and said second side wall and is perpendicular to said base wall;

wherein said support wall is centrally positioned within the cabinet between said base wall and an underside of said removable shelf; wherein the support wall supports said shelf.

2-4. (Cancelled).

5. (Previously Presented) The cabinet of claim 1, wherein the first, second and third support members each have a rounded upper edge.

6. (Previously Presented) The cabinet of claim 1, wherein each of said first, second and third members is a lance.

7-8. (Cancelled).

9. (Original) The cabinet of claim 1, wherein said cabinet is fabricated from metal.

10.-21. (Cancelled).

IX. EVIDENCE APPENDIX

NONE

X. RELATED PROCEEDINGS APPENDIX

NONE